

HOUSE BILL REPORT

HB 1471

As Reported By House Committee On:

Health Care
Appropriations

Title: An act relating to vulnerable adults.

Brief Description: Protecting vulnerable adults.

Sponsors: Representatives Dyer, Cody, Zellinsky, Conway, Ogden, Linville, Tokuda, Kessler, Scott, Blalock, Gombosky, Costa and Dickerson; by request of Attorney General.

Brief History:

Committee Activity:

Health Care: 2/7/97, 3/4/97 [DPS];
Appropriations: 3/7/97 [DPS(HC)].

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Dyer, Chairman; Backlund, Vice Chairman; Skinner, Vice Chairman; Cody, Ranking Minority Member; Murray, Assistant Ranking Minority Member; Anderson; Conway; Parlette; Wood and Zellinsky.

Minority Report: Do not pass. Signed by 1 member: Representative Sherstad.

Staff: John Welsh (786-7383).

Background: A 1996 report by the Long-term Care Ombudsman (Resident Rights, Quality of Care and Regulatory Enforcement) identified concerns with current law regarding the protection of vulnerable persons. The report noted that police departments are not interested in referrals involving residents of long-term care facilities and that criminal prosecutions rarely occur. Two major reasons were cited for this. Many of the potential witnesses are not competent to testify and the current criminal code does not have readily applicable provisions that cover mistreatment of frail or vulnerable adults. The Attorney General's Office reviewed the criminal code and developed suggested legislation.

Summary of Substitute Bill: A new crime of criminal mistreatment in the third degree is established for a person who, while caring for a frail elderly person or vulnerable adult, negligently creates a risk of bodily injury by withholding the basic necessities of life, or negligently causes bodily injury by withholding the basic necessities of life. Persons employed to provide the basic necessities of life to a frail elderly or vulnerable adult may be subject to prosecution for criminal mistreatment if their conduct does not meet the statutory requirements.

New grounds are also created for committing rape in the second degree and indecent liberties for a person who engages in sexual intercourse with a frail elderly or vulnerable adult. A person would be guilty of indecent liberties when he/she knowingly causes another person who is not his/her spouse to have sexual contact with him/her when the victim is a frail elder or vulnerable adult and the perpetrator has a significant relationship with the victim. A significant relationship is defined to include a person who professionally or voluntarily provides assistance, personal care or organized recreational activities to frail elders or vulnerable adults. A significant relationship is not defined to include a romantic relationship between a person and a frail elder or vulnerable adult.

Individuals who are employed by licensed facilities or who apply for employment with licensed facilities are required to truthfully disclose their criminal background history or be liable for perjury.

All adult family homes and boarding homes are required to report suspected abuse and neglect to law enforcement when the injury makes such a report appropriate. Failure to report abuse or neglect are established. Failure to report is made applicable to adult family homes. Whistle blower provisions are established.

Substitute Bill Compared to Original Bill: Clarification is provided to specify that Christian Science and hospice care are not intended to be considered criminal mistreatment. Criminal mistreatment is further clarified to be not committed when a health care provider decides that medical treatment is not necessary in a particular case, or decides that one kind of treatment is preferable over another treatment. Language is added to clarify that persons in the business of providing care do not have an obligation to continue to do so if they are not paid for such care, but may not offer this defense if they have contracted for payment, and anticipate payment for care provided even if the payment has not been received. All references to criminal negligence are specified to mean in the Third Degree of Criminal Mistreatment not just less-than-careful behavior. Language is added to clarify that the whistleblower protection is intended to be used as a protection for employees who have acted in a lawful way and not to be used as a way for employees to get back at employers if they are rightfully terminated or demoted.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: This measure will serve to help in the prosecution of persons who abuse or neglect vulnerable persons. It contains important protections for whistleblowers in nursing homes, adult family homes, and boarding homes, and provides sanctions for the failure to report abuse.

Testimony Against: This measure could be expensive to implement and might serve as a significant disincentive for caregivers to work in this career track.

Testified: Christine Gregoire, Attorney General; Art Curtis, Washington Association of Prosecuting Attorneys; Mike Courtney, AARP (pro); Bill Sellars, The Arc of Washington (pro); Bob Shirley, Assisted Living Facilities; Jeff Larsen, Washington State Residential Care Council (con); Peg Isenhower, Home Care Association of Washington; and Pat Lashway, DSHS (pro).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Health Care be substituted therefor and the substitute bill do pass. Signed by 26 members: Representatives Huff, Chairman; H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson; Chopp; Cody; Cooke; Crouse; Dyer; Grant; Keiser; Kenney; Kessler; Linville; Lisk; Mastin; McMorris; Parlette; Regala; D. Schmidt; Sehlin; Sheahan; Talcott and Tokuda.

Staff: Jason Hall (786-7145).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Health Care: No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill will increase prosecution of cases of abuse and neglect in adult family homes and boarding homes.

Testimony Against: None.

Testified: Melissa DeGroff, Office of the Attorney General.